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Artesian Future Technology, LLC

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

10 In re:

11 ARTESIAN FUTURE TECHNOLOGY, LLC,
12 a North Carolina limited liability company,
13 dba ARTESIAN BUILDS, dba ARTESIAN,
14 LLC, dba BLDYR, INC., dba ARTESIAN,

Debtor.

Case No. 22-40396 CN

Chapter 11

Date: May ____, 2022

Time: 11:00 a.m.

Place: Via Tele/Videoconference

15 **MOTION FOR ENTRY OF ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS**
16 **363 AND 105 APPROVING THE ENGAGEMENT CONTRACT BETWEEN BPM, LLP**
17 **AND THE DEBTOR**

18 TO THE HONORABLE CHARLES NOVACK:

19 Artesian Future Technology, LLC, the debtor and debtor in possession (the “Debtor” or
20 “Artesian”) moves this Court for approval of the April 22, 2022 Consulting Engagement Letter
21 Terms & Conditions (the “Engagement Contract”) governing the terms of engagement and
22 compensation of Edward Webb, DBA and a partner at BPM, LLP (“BPM”) as the Chief
23 Restructuring Officer (“CRO”) of the Debtor and as its Responsible Individual (“RI”) and for
24 BPM to provide support to the CRO as set forth below. The Engagement Contract is attached as
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1 Exhibit "A" to the Webb Declaration¹ filed in support of this Motion. The Debtor seeks approval
2 of the Engagement Contract under 11 U.S.C. §363 conditioned on compliance with the Jay Alix
3 Protocol.

4 The Debtor respectfully represents as follows in support of this Motion:

5 **I. STATEMENT OF FACTS**

6 **A. Commencement of Bankruptcy Case**

7
8 1. On April 22, 2022, the Debtor filed a voluntary petition for relief under chapter 11
9 of the Bankruptcy Code in which it elected to proceed under Subchapter V of title 11. The Debtor
10 is managing its property as a debtor and debtor in possession pursuant to section 1184 of the
11 Bankruptcy Code.

12 **B. General Background**

13
14 2. The Debtor is a North Carolina limited liability company with operations in
15 Oakland, California and Durham, North Carolina. The Debtor was founded by Noah Katz. Noah
16 Katz is Debtor's managing member and sole owner. Prior to February 2022, the Debtor
17 manufactured high end custom computers for gaming and cryptocurrency mining and related
18 parts. The Debtor developed a strong following in the gaming community and reputation for
19 quality associated with its name. On March 1, 2022, the Debtor's reputation and industry
20 following were damaged severely after a small streamer asserted that Mr. Katz, had, during a
21 livestreamed event, denied her a sweepstakes prize in a drawing. Unfortunately, the streamer's
22 complaint was retweeted over 8,000 times. Mr. Katz later apologized, but those events eventually
23 resulted in a steep downward financial spiral for the Debtor. The Debtor was forced to close
24

25
26 ¹ Declaration Of Dr. Edward Webb In Support Of Motion For Entry Of Order Pursuant To
27 Bankruptcy Code Sections 363 And 105 Approving The Engagement Contract Between At BPM,
28 LLP And The Debtor (the "Webb Declaration").

1 down its operations and laid off all of its employees. As a result, the Debtor now maintains
2 saleable inventory both Oakland and North Carolina. The Debtor has engaged in discussions with
3 several potential buyers in an effort to arrange a competitive sale of these assets and maximize
4 what may be a valuable brand name. No sale of the Debtor's name or assets can recover market
5 value with Mr. Kat' reputation influencing potential buyers. In addition to a fresh face for the
6 sale, strong financial management is necessary to prepare the books and records for the expected
7 sale. As a result, the Debtor has moved for approval of a chief restructuring officer.

9 C. Engagement of BPM

10 3. Debtor seeks to retain BPM whose address is 2001 North Main Street, Suite 360,
11 Walnut Creek, CA 94596. BPM is a full-service audit, tax and financial consulting firm with over
12 64 partners and 12 offices in internationally.

13 4. On March 16, 2022, the Debtor engaged BPM to provide operational and financial
14 management advice in anticipation of bankruptcy. A copy of BPM's March 16, 2022 Engagement
15 letter is attached to the Webb Declaration as Exhibit "B". BPM's pre-filing tasks included
16 preparing a situational analysis, evaluating asset value, and determining short- and long- term
17 debt constraints. This work included accounting statement review and the updating the Debtor's
18 balance sheet. BPM was engaged with an Initial Retainer (defined below) of \$50,000.

19 5. On April 22, 2022, the Debtor entered into the Engagement Contract that is the
20 subject of this Motion. Dr. Webb's duties under the Engagement Contract are to serve as the
21 Debtor's CRO, provide financial reporting and management advice to Artesian including advice
22 regarding cash flow management, oversee bank accounts, and engage in lease negotiations, lead
23 efforts to market and conduct an asset sale, oversee the management of the bankruptcy for the
24 Debtor, and develop a Subchapter V plan. Dr. Webb's billing rate for this case is \$680 per hour.

1 6. The Engagement Contract contemplates accounting support from three other
2 employees of BPM: (a) Managing Director Michael Ruane who specializes in valuation services
3 and financial analysis, (b) Corporate Finance Associate Mahnoosh Moghadam, who will provide
4 transactional services and general financial support, and (c) Executive Assistant Terri Oswald,
5 who will provide general support to all members of BPM's team on this engagement. Mr.
6 Ruane's hourly billing rate is \$420.00. Mr. Moghadam's hourly rate is \$240.00. Ms. Oswald's
7 services will not be charged to the Debtor.
8

9 7. Exhibit A to the Engagement Contract provides as follows: "Indemnification. You
10 agree to indemnify, defend, and hold harmless us and any of our partners, principals, shareholders,
11 officers, directors, members, employees, agents or assigns with respect to any and all claims made
12 by third parties arising from this engagement, regardless of the nature of the claim, and including
13 the negligence of any party, excepting claims arising from our gross negligence or intentionally
14 wrongful acts." As part of this Motion, the Debtor requests that the Court approve this limited
15 indemnification provision.
16

17 **D. Third-Party Retainers Paid and Source**

18 8. The only way to maximize asset value through a bankruptcy was to retain the legal
19 and financial professionals and a CRO. Debtor had no liquid assets to pay for such fees. The only
20 way for the Debtor could do so was to borrow. The only lenders willing to advance funds were
21 Belinda Novick and Barry Katz, the parents of Noah Katz. Ms. Novick and Mr. Barry Katz were
22 only willing to make this loan on a secured basis.
23

24 9. On April 6, 2022, the Debtor authorized by unanimous written consent the
25 borrowing of \$398,425 from Belinda Novick and Barry Katz, as lenders, and the granting of a lien
26 against its assets to secure it. On the same date the Debtor (under the signature of Mr. Noah Katz)
27 executed a Secured Demand Promissory Note (the "Note") and a security agreement to evidence
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1 the debt. The purpose of the secured borrowing was to fund pre-petition professional fees and
2 post-petition retainers for BPM and general reorganization counsel, Binder & Malter, LLP, and to
3 pay certain critical expenses such as rent. Ms. Novik and Mr. Barry Katz filed UCC-1 financing
4 statements with the Secretaries of State of North Carolina and California on April 6, 2022. The
5 Note, the security agreements and the two UCC-1 financing statements are attached to the Webb
6 Declaration as Exhibits “C”, “D” and “E”.
7

8 10. On March 23, 2022, BPM received a wire transfer of \$50,000 from Belinda Novik
9 (its “Initial Retainer”) as an advance under the Note. BPM expended \$46,934.12 of the Initial
10 Retainer prior to the filing of this bankruptcy case.

11 11. On April 12, 2022, BPM received \$100,000 from the trust account of Baskin &
12 Fowler² as a further advance under the Note. The remaining \$3,065.88 from the Initial Retainer,
13 along with the \$100,000 paid on April 12, 2022, constitutes BPM’s Chapter 11 retainer for this
14 case.
15

16 12. The relief requested herein is necessary to the successful administration of this
17 bankruptcy case. The Debtor seeks to retain the CRO and BPM so they may continue to provide
18 financial, accounting, management services and guide the Debtor through a successful resolution
19 of its chapter 11 case. Further, any delay of the CRO’s, and BPMs services could cause
20 irreparable harm to the Debtor’s estate.
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22 II. QUALIFICATIONS

23 E. Qualifications of Dr. Edward Webb as Chief Restructuring Officer

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25

26 ² Mr. Caleb Baskin was counsel for Artesian at the time. Mr. Baskin resigned as entity
27 counsel just prior to the bankruptcy filing. Mr. Baskin now represents Belinda Novick and Barry
28 Katz personally

1 13. Dr. Edward Webb's curriculum vitae are attached as Exhibit "C" to his supporting
2 declaration. Dr. Webb leads the Corporate Finance Consulting group at BPM and sits on the
3 firm's Board of Directors and Management Committee and serves as Partner in Charge of the
4 firm's Virtual Region. Dr. Webb was on the adjunct faculty at San Jose State University for 9
5 years. Dr. Webb has served both as an interim Chief Executive Officer and Chief Restructuring
6 Officer of troubled companies, a rents and profits receiver, a financial advisor in bankruptcy cases,
7 and an expert witness in litigation. Dr. Webb is a Certified Turnaround Professional (CTP), 2016
8 and completed Bankruptcy Mediation Training, St. John's University/ABI, 2016. Dr. Webb's
9 academic credentials include a BA with Honors from the University of North Carolina at Chapel
10 Hill; an MBA in Finance from Indiana University; and, a Doctorate in Business Administration
11 from Temple University.
12

13 14. Michael Ruane is a Managing Director in BPM's Advisory practice and specializes
14 in providing valuation services and financial analysis to clients of all sizes for diverse purposes.
15 Mr. Ruane's academic credentials include the following: B.B.A. in Finance from Loyola
16 University Chicago; M.B.A. in Finance from Loyola University Chicago; Accredited Senior
17 Appraiser by the American Society of Appraisers; and Member of the Board of Examiners of the
18 American Society of Appraisers. Mr. Ruane is budgeted to expend 50 hours on this case. Mr.
19 Ruane's resume is attached to the Webb Declaration as Exhibit "G".
20

21 15. Mahnoosh Moghadam is a Finance associate with the responsibility of preparing
22 weekly cash reports, assisting in the cash flow budgeting process. She also provides additional
23 accounting support for bankruptcy reporting requirements. Ms. Moghadam is a graduate of
24 University of California, Irvine and has 4 years of restructuring focused finance and accounting
25 experience. Mr. Moghadam is budgeted to expend 100 hours on this case. Mr. Moghadam's
26 resume is attached to the Webb Declaration as Exhibit "H".
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1 16. As a firm, BPM has advised dozens of clients over the past 5 years in bankruptcy
2 and insolvency proceedings across the country and is well qualified to provide the services set
3 forth in the Engagement Contract.

4 **F. Compliance with Jay Alix Protocol**

5 17. Notwithstanding any provisions of the Engagement Contract to the contrary,
6 consistent with the “Jay Alix Protocol” implemented by the Office of the United States Trustee,
7 Dr. Webb and BPM agree that:

- 8
- 9 a. In the event the Debtor seeks to have any of persons assume executive officer positions
10 other than Dr. Webb, or to materially change the terms of the engagement by modifying
11 the functions of the executive officer personnel, a motion to modify the employment as
12 such will be filed.
- 13
- 14 b. No principal, employee, or independent contractor of BPM and its affiliates will serve as a
15 director of the Debtor during the pendency of the Debtor’s chapter 11 case.
- 16 c. For a period of three (3) years after the conclusion of the engagement, neither BPM nor
17 any of its affiliates will make any investments in the Debtor.
- 18 d. BPM shall file with the Court and serve copies on the United States Trustee and the
19 Subchapter V trustee, a monthly report of staffing on the engagement for the previous
20 month. Such report shall include the names and functions filled of the individuals assigned.
21 All staffing shall be subject to review by the Court in the event an objection is filed.
- 22 e. BPM shall file with the Court and serve copies on the United States Trustee and the
23 Subchapter V trustee, reports of compensation earned and expenses incurred on at least a
24 quarterly basis. Such reports shall contain summary charts which describe services
25 provided, identify the compensation earned by the CRO and each BPM employee
26 provided, and itemize the expenses incurred. Time records for the CRO and all Additional
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1 Personnel shall (i) be appended to the reports, (ii) contain detailed time entries describing
2 the task(s) performed, and (iii) be organized by project category. When BPM personnel are
3 providing services at an hourly rate, such personnel shall record their time entries in
4 increments of no greater than one-half hour (0.5). All compensation shall be subject to
5 review by the Court in the event an objection is filed. The first quarterly report will be
6 submitted forty-five (45) days from the end of the first calendar quarter after the Petition
7 Date and will cover the period to and including the last day of the first quarter after the
8 Petition Date. This procedure will continue at three-month intervals thereafter. Because the
9 CRO and BPM are not being employed as professionals under section 327 of the
10 Bankruptcy Code, they will not be submitting regular fee applications pursuant to sections
11 330 and 331 of the Bankruptcy Code. The CRO and BPM will, however, submit the
12 reports described above.
13
14

15 **G. DISINTERESTEDNESS OF BPM**

16 18. Although the Debtor does not propose to retain the CRO and BPM under section
17 327 of the Bankruptcy Code, BPM and the CRO have nonetheless performed a computerized
18 conflict check and, to the best of their knowledge and except to the extent disclosed in the Webb
19 Declaration and below, do not hold any interest adverse to the interests of the Debtor's estate. By
20 his declaration, Dr. Webb provides full and complete disclosure to demonstrate that he and BPM
21 satisfy all requirements that would be imposed by the Bankruptcy Code and Bankruptcy Rules for
22 employment under section 327.
23

24 19. The CRO and BPM have agreed not to share with any person or entity any
25 compensation received by it in the Debtor's case with any non-affiliated entity.

26 20. The Debtor does not owe BPM or the CRO any amount for services performed or
27 expenses incurred prior to the Petition Date as BPM drew down from funds on hand for all unpaid
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1 fees and costs before the filing. The CRO had incurred no fees as of the filing. Thus, BPM and
2 the CRO are not pre-petition creditors of the Debtor.

3 21. Neither the CRO nor BPM, nor any of its principals, employees, agents or
4 affiliates, have any connection with the Debtor, its significant creditors, the United States Trustee
5 or any other significant party with an actual or potential interest in this bankruptcy case or their
6 respective attorneys or accountants, except as set forth in the Webb Declaration and as follows: (a)
7 BPM's and the CRO's pre-petition fees and Chapter 11 retainer were paid from an advance under
8 the Note; and (b) BPM has worked as an appointed accounting, finance and/or valuation
9 professional in other chapter 11 bankruptcy cases in the Northern District of California
10 Bankruptcy Court in which Binder & Malter LLP has been counsel for the chapter 11 debtor.

12 **H. IN RE LOTUS PROPERTIES ANALYSIS**

13 22. 11 U.S.C. §§ 327(a) and 1107 provide authority which can be applied, by analogy,
14 to BPM's employment under section 363 and the Jay Alix Protocol. These sections authorize a
15 debtor-in-possession, with the court's approval, to employ attorneys "...that do not hold or
16 represent an interest adverse to the estate, and that are disinterested persons, to represent or assist
17 the trustee in carrying out the trustee's duties under this title." BPM does not represent any other
18 person or entity in this case and has no claim against the estate.

19 23. The term "adverse interest" is not defined in the Bankruptcy Code. Reported cases
20 have defined what it means to hold an adverse interest as follows: "(1) to possess or assert any
21 economic interest that would tend to lessen the value of the bankrupt estate or that would create
22 either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a
23 predisposition under circumstances that render such a bias against the estate." *Tevis v. Wilke,*
24 *Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 688, 2006 Bankr. LEXIS 1664,
25 *13 (9th Cir. BAP 2006).

26 24. Disinterestedness is implicated when a third party supplies a professional's retainer
27 or pays its fees. The Ninth Circuit follows the majority view that such payments do not result in
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1 *per se* disqualification. Instead, courts are to apply the “analytical” or “totality of circumstances.”
2 test. In *In re Lotus Properties, LP*, 200 B.R. 388, 391 (Bankr. C.D. Cal. 1996), the bankruptcy
3 court refused to adopt a *per se* rule against legal representation by payment from a third party, in
4 that case the principal of the debtor, and instead adopted the approach set forth in *In re Kelton*, 109
5 Bankr. 641 (Bankr.D.Vt. 1989):

6 Kelton established a five-part test to serve as a guideline where
7 counsel for the debtor is funded by debtor's insiders. The list
includes the following elements:

- 8 (1) the arrangement must be fully disclosed to the
9 debtor/client and the third-party payor/insider;
- 10 (2) the debtor must expressly consent to the arrangement;
- 11 (3) the third-party payor/insider must retain independent
12 legal counsel and must understand that the attorney's
13 duty of undivided loyalty is owed exclusively to the
debtor/client;
- 14 (4) the factual and legal relationship between the third-
15 party payor/insider, the debtor, the respective
16 attorneys, and their contractual arrangement
concerning the fees, must be fully disclosed to the
17 Court at the outset of the debtor's bankruptcy
representation;
- 18 (5) the debtor's attorney/applicant must demonstrate and
19 represent to the Court's satisfaction the absence of
20 facts which would otherwise create non-
disinterestedness, actual conflict, or impermissible
potential for a conflict of interest. *Id.* at 658.

21 *In re Lotus Props. LP*, 200 B.R. 388, 393, 1996 Bankr. LEXIS 1425, *15-16 (Bankr. C.D. Cal.
22 1996). Application of the *Lotus Properties/Kelton* factors to the appointment of Dr. Webb and
23 BPM follows.

24 **Factor 1:** The Arrangement Was Fully Disclosed to the Court and Creditors Through
25 Broad Notice of This Application.

26 25. Ms. Novik, Mr. Barry Katz and Artesian were each sent letters pursuant to the
27 obligations of counsel under Rule 3-310(f) of the California Rules of Professional Conduct that

1 included disclosures as to the CRO and BPM, though accountants are not subject to California's
2 Ethics Rules as are counsel. The letter to the Debtor, which is available on request for in camera
3 review, provides the following mandatory notifications:

4 Ms. Novik and Mr. Barry Katz paid \$398,425 for current fees and
5 costs as well as Chapter 11 retainers of BPM and Binder & Malter,
6 LLP and operating expenses and took a lien against estate assets to
secure the borrowing;

7 The Debtor must consent to payment by Ms. Novik and Mr. Barry
8 Katz of the fees and retainers referenced above to address the
hypothetical issue of a professional's loyalties being divided.

9 Ms. Novik and Mr. Barry Katz are not the client, the Debtor is, and
10 BPM and Binder & Malter will represent Artesian's interests fully
and vigorously without regard to the interests of Ms. Novik and Mr.
Barry Katz.

11 26. The letter to Ms. Novik and Mr. Barry Katz, a copy of which is attached as
12 Exhibit "T" to the Webb Declaration provides as follows:

13 This letter discusses the fact that you loaned Artesian \$398,425.00
14 for use to pay professional fees, retainers and operational expenses and took
and perfected a lien against Artesian's assets to secure that borrowing.

15 On April 6, 2022, the Debtor under the signature of your son, Mr.
16 Noah Katz, executed a Secured Demand Promissory Note (the "Note") to
17 evidence the \$398,425 debt. The purpose of the secured borrowing was to
18 fund pre-petition professional fees and post-petition retainers for BPM, LLP
19 ("BPM") and general reorganization counsel, Binder & Malter, LLP and
pay other operating expenses. You filed UCC-1 financing statements with
the Secretaries of State of North Carolina and California on April 6, 2022.

20 The loan proceeds specifically funded the following payments of
21 professionals:

- 22 - \$60,000 on March 10, 2022, to my firm for services rendered
23 and costs advanced between the date of payment and April
22, 2022;
- 24 - \$50,000 on March 23, 2022 to BPM for services rendered
25 and costs advanced between the date of payment and April
22, 2022;
- 26 - \$150,000 on April 12, 2022, to my firm to pay pre-petition
27 fees and costs in excess of the initial \$60,000 paid and to
28

1 fund a Chapter 11 retainer with the balance of \$108,879.72;
2 and,

- 3 - \$100,000 on April 12, 2022, to BPM to fund its Chapter 11
4 retainer.

5 I am also writing to seek confirmation of your understanding that (a)
6 my firm's and BPM's duty is solely to Artesian, (b) Binder & Malter, LLP
7 and BPM intend to represent the interests of Artesian vigorously without
8 regard to your interests, (c) neither my firm nor BPM nor Artesian can or
9 will take any instructions from you as to how to prosecute any aspect of
10 this case, (d) there is no agreement of any kind between, on one hand, my
11 firm and BPM and, on the other hand, you, including but not limited to any
12 agreement or understanding as regards the payment of further fees, (e) my
13 firm and BPM, on one hand, and you on the other hand have no other
14 connections of any kind; (f) neither my firm nor BPM is in any way
15 prohibited from investigating the lien you took against estate assets or
16 seeking to avoid any defect in it; and (g) under no circumstances will my
17 firm or BPM take direction from you with respect to any sale of assets in the
18 Artesian bankruptcy case, who has made the highest or best offer, and who
19 the successful bidder at auction should be.

20 You should consult legal counsel about your decision to loan funds
21 to Artesian and my firm's duties of loyalty and confidentiality as set forth
22 above. This letter contains a place below for a signature by your own
23 counsel.

24 **Factor 2:** The Debtor Expressly Consented to the Arrangement.

25 27. Noah Katz, Debtor's sole member, counter-signed the letter to the Debtor stating
26 that "I have read the foregoing, understand it and, by signing below, give the consent of Artesian
27 Future Technology, LLC on the terms and conditions set forth above."

28 **Factor 3:** Ms. Novik and Mr. Barry Katz Retained Separate Counsel and Understand
That the Professionals' Duty of Undivided Loyalty is Owed Exclusively to the Debtor/Client.

29 28. Ms. Novik and Mr. Barry Katz counter-signed the letter to them, stating that "[w]e
30 have had the opportunity to consult our own legal counsel and understand the duty of loyalty that
31 Binder & Malter, LLP and BPM have to Artesian as set forth above." The Debtor has been
32 informed and believes that Ms. Novik and Mr. Barry Katz retained North Carolina counsel who

1 provided them with legal advice as regards the Note and perfection of the lien with respect thereto.
2 as their counsel. Counsel for Ms. Novik and Mr. Barry Katz signed off on the letter to them.

3
4 **Factor 4:** The Factual and Legal Relationship Between the Third-Party Payor/Insider,
5 the Debtor, the Respective Attorneys, and Their Contractual Arrangement Concerning the Fees,
6 Must Be Fully Disclosed to The Court at the Outset.

7
8 29. As set forth in the Webb Declaration, the details of the Debtor's relationship with
9 Ms. Novik and Mr. Barry Katz, their relationship with proposed professionals, and the absence of
10 any agreement regarding past, current or future fees, as set forth above, is as follows:

- 11 - On April 6, 2022, the Debtor authorized by unanimous written consent the
12 borrowing of \$398,425 from Belinda Novick and Barry Katz
- 13 - On the same date the Debtor executed the Note to evidence the debt.
- 14 - The purpose of the secured borrowing was to fund pre-petition professional fees
15 and post-petition retainers for BPM and general reorganization counsel, Binder &
16 Malter, LLP and also to pay certain operating expenses of the Debtor.
- 17 - Ms. Novik and Mr. Barry Katz filed UCC-1 financing statements with the
18 Secretaries of State of North Carolina and California on April 6, 2022.
- 19 - On March 23, 2022, BPM received a wire transfer of the Initial retainer of \$50,000
20 from Belinda Novik
- 21 - On April 12, 2022, BPM received \$100,000 on April 12, 2022 from the trust
22 account of Baskin & Greene of funds supplied by Belinda Novick and Barry Katz,
23 as a further advance under the Note.
- 24 - Ms. Novik and Mr. Barry Katz are owed on an unsecured basis the sum of
25 \$723,442.87 for previous loans made to the Debtor and payments to creditors made
26 on its behalf prior to March 2022, which unsecured loans are evidenced by
27 accounting entries in the Debtor's financial records. There are no contracts
28 between the Debtor and Ms. Novik and Mr. Barry Katz other than the Note and
related Security Agreement.
- Ms. Novik and Mr. Barry Katz, the parents of Debtor's sole and managing member,
are statutory insiders within the meaning of 11 U.S.C. §101(31).

1 - Proposed counsel provided written notification to the Debtor that the firm's duty of
2 loyalty and confidentiality run solely to the Debtor and not to Ms. Novik and Mr.
3 Barry Katz.

4 - Proposed counsel also informed Ms. Novik and Mr. Barry Katz in writing that

5 (a) Binder & Malter's and BPM's duty is solely to Artesian;

6 (b) Binder & Malter, LLP and BPM intend to represent the interests
7 of Artesian vigorously without regard to their interests;

8 (c) neither Binder & Malter nor BPM nor Artesian can or will take
9 any instructions from them as to how to prosecute any aspect of this case;

10 (d) there is no agreement of any kind between, on one hand, Binder
11 & Malter and BPM and, on the other hand, Ms. Novik and Mr. Barry Katz,
12 including but not limited to any agreement or understanding as regards the payment
13 of further fees,

14 (e) Binder & Malter and BPM, on one hand, and Ms. Novik and Mr.
15 Barry Katz, on the other hand have no other connections of any kind;

16 (f) neither Binder & Malter nor BPM is in any way prohibited from
17 investigating the lien Ms. Novik and Mr. Barry Katz took against estate assets or
18 seeking to avoid any defect in it; and,

19 (g) under no circumstances will Binder & Malter or BPM take
20 direction from Ms. Novik and Mr. Barry Katz with respect to any sale of assets in
21 the Artesian bankruptcy case, who has made the highest or best offer, and who the
22 successful bidder at auction should be.

23 30. Accordingly, to the extent relevant, the Debtor respectfully submits that BPM is a
24 "disinterested person" as defined in section 101(14) of the Bankruptcy Code.

25 WHEREFORE, the Debtor respectfully requests that the Court grant the Motion and
26 approve the Engagement Contract under 11 U.S.C. §363 conditioned on compliance with the Jay
27 Alix Protocol, and for such other and further relief as the Court deems just and proper.

28 Dated: April 27, 2022

BINDER & MALTER, LLP

By: /s/ Robert G. Harris

Robert G. Harris

Proposed Attorneys for Debtor and Debtor-in
Possession Artesian Future Technology, LLC

MOTION FOR ENTRY OF ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 363 AND 105 APPROVING
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